

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

Raul Castaneda,
Complainant,
vs.
Chiquita Processed Foods, LCC,
Respondent.

FINDINGS OF FACT,
CONCLUSIONS AND
ORDER

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) George A. Beck on January 14, 2004, beginning at 9:00 a.m. at the Sherburne County Jail in Elk River, Minnesota and continuing that afternoon and the following day at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, MN. The record closed upon the conclusion of the hearing on January 15, 2004.

David L. Shulman, Esq. of the firm of Shulman & Dornbos, 1005 West Franklin Avenue, Suite 3, Minneapolis, MN 55405, appeared on behalf of the Complainant, Raul Castaneda. Laura McKnight, Esq. and Jessica Mason Pieklo, Esq. of the firm of Bassford, Remele, PA, 33 South 6th Street, Suite 3800, Minneapolis, MN 55402-3707, appeared representing the Respondent, Chiquita Processed Foods, LCC.

NOTICE

This Order is the final decision in this case under Minn. Stat. § 363.071, subd. 2 and 3. Under Minn. Stat. § 363.072 the Commissioner of the Department of Human Rights or any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. § § 14.63 and 14.69.

STATEMENT OF ISSUE

The issues in this contested case proceeding are whether the Respondent, Chiquita Processed Foods, discriminated against the Complainant, Raul Castaneda, on the basis of sex in violation of Minnesota law^[1] and, if so, what damages or other relief should be awarded.^[2]

Based upon all the testimony, written exhibits, and filings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Raul Castaneda, age 47, is a resident of Waseca, Minnesota. He has been married for 22 years and has seven children. He has been a Minnesota resident for 20 months and a United States citizen for three years. He was originally from Mexico and his race is Hispanic.

2. Prior to working for Chiquita Processed Foods, Mr. Castaneda worked seasonally for several years at Seneca, a food production factory in Glencoe, Minnesota. He worked there from August to October of 2001. He worked in sanitation or cleaning at Seneca as well as in other positions. He has also worked as a taxi driver when food production work was not available.

3. On December 13, 2001 Mr. Castaneda was hired as a sanitation worker at Chiquita's food processing facility in Owatonna, Minnesota. His rate of pay was \$10.00 per hour and he obtained company housing at a rent of \$25.00 per week. He was required to serve a 30-day probationary period after which he would become a union member.

4. Mr. Castaneda worked a shift from 10:00 p.m. to 6:00 a.m. and was responsible for cleaning the food processing machinery prior to the beginning of a shift at 4:30 a.m. Mr. Castaneda was hired by Dale Hanson, the lead sanitation worker and Harvey Castillo-Delgado, the Assistant Manager for Human Resources. Mr. Hanson, age 39, has worked for Chiquita since 1987. He resides in Owatonna with his mother and has part-time custody of his daughter.

5. Mr. Delgado explained the company's rules and work policies to Mr. Castaneda and provided him with a copy of those policies in Spanish.^[3] Mr. Castillo-Delgado also explained the company's sexual harassment policy to Mr. Castaneda. The sexual harassment policy is posted in Spanish in the lunchroom where all of the employees eat. The policy explained how to make a complaint.

6. The Owatonna plant has about 200 employees when it is running. Mr. Hanson supervises approximately 12 sanitation workers, almost all of whom are Hispanic and speak only Spanish.^[4] Mr. Castillo-Delgado, who speaks Spanish, was on the floor of the plant every day and served as an interpreter for Mr. Hanson when necessary.

7. The cleaning of the plant and its machinery is critical because the plant is inspected by a USDA inspector prior to the commencement of each 4:30 a.m. shift. The inspector has the authority to shut the plant down if he finds that it has not been adequately cleaned. Sanitation workers sometimes fail to clean properly and it was Mr. Hanson's responsibility to catch the mistakes and see that they were remedied prior to the inspection.

8. When Mr. Castaneda started working for Chiquita, Mr. Hanson assigned another sanitation worker, Juan Sanjuanero to train in Mr. Castaneda. Mr. Sanjuanero had worked for Chiquita for over four years in sanitation and had trained in other employees. On the second day of his employment Mr. Castaneda became upset when

Mr. Sanjuanero explained how he should do the job. He would also become upset if asked to clean an area a second time. Mr. Castaneda offered to fight Mr. Sanjuanero on two occasions: once when Mr. Sanjuanero told him not to put things in an aisle and on another occasion when Mr. Castaneda wanted to use a hose and took it from Mr. Sanjuanero. Mr. Sanjuanero became aware that Mr. Castaneda kept a knife in his boot and Mr. Castaneda told him not to mess with him and cursed him. Mr. Sanjuanero had to do Mr. Castaneda's cleaning work over again because it wasn't done properly. When Mr. Castaneda wanted to fight with Mr. Sanjuanero, Mr. Sanjuanero told Mr. Hanson that he no longer wanted to train Mr. Castaneda.

9. Mr. Hanson then asked Francisco Oropesa to train in Mr. Castaneda. Mr. Oropesa had been employed at Chiquita for four years in sanitation. Mr. Oropesa found that Mr. Castaneda would not pay attention to him when he explained how things should be done and became angry if mistakes were pointed out. Mr. Castaneda was unable to accept instruction from Mr. Oropesa. Mr. Oropesa also had to clean up work areas after Mr. Castaneda had cleaned them. Mr. Oropesa also told Mr. Hanson that he no longer wanted to train Mr. Castaneda and that it was not working out. After this Mr. Hanson attempted to work with Mr. Castaneda when he had time to do so. He pointed out problems to Mr. Castaneda with his cleaning.

10. Chiquita maintains a pre-operation sanitation checklist for each day the plant is operating. The sanitation workers place their initials on the sheet to show what equipment they have cleaned. Mr. Hanson then checks the cleaning and indicates if it is unsatisfactory and what action must be taken to remedy the situation. The checklists show that Mr. Castaneda satisfactorily cleaned the meat preparation equipment on December 21, 2001 and (for a half-day) on January 11, 2002.

11. On January 8, 2002 Mr. Castaneda was cleaning in his work area when Mr. Hanson called him over. Mr. Hanson then pointed at a machine, put his arm around Mr. Castaneda's neck and pulled Mr. Castaneda toward him. In doing so their faces touched and the side of their bodies touched. When working, the sanitation workers wear a hairnet, a hard hat, a white coat that extends to the knees, and ear protection. The plant can be noisy. Mr. Castaneda did not say anything to Mr. Hansen but immediately pulled away and went back to his cleaning. Mr. Hanson did not say anything to Mr. Castaneda. Mr. Castaneda felt uncomfortable when this happened.

12. On January 9, 2001 Mr. Castaneda was responsible for cleaning the meat preparation area. When Mr. Hanson inspected the meat preparation area he found three problems that required recleaning. He asked Francisco Oropesa to complete the cleaning since Mr. Castaneda had left the area and gone to clean a warehouse across the street. Mr. Oropesa then initialed the pre-op sanitation checklist.^[5]

13. Mr. Castaneda was again responsible for cleaning the meat preparation area on January 10, 2002. A new USDA inspector arrived early that day at 3:45 a.m. and found that the meat preparation area had not been properly cleaned. When Mr. Hanson checked he found three areas that needed to be recleaned^[6] and Mr. Hanson

promised the inspector that he would be cleaned up promptly. The plant was able to start production at 4:30 a.m.

14. Jorge Lopez was hired as a sanitation worker at Chiquita on December 17, 2001. On January 11, 2002 Mr. Lopez and Mr. Castaneda were working in adjacent areas when Mr. Castaneda threw meat and carrots into an area that Mr. Lopez had cleaned. Mr. Castaneda told Mr. Lopez that he was tired of him and offered to fight. Mr. Lopez asked Mr. Hanson to calm Mr. Castaneda down and Mr. Hansen sent Mr. Lopez away to obtain some sanitizer. Mr. Hansen then told Mr. Castaneda not to follow Mr. Lopez.

15. After the conflict with his fellow employees, Mr. Castaneda asked Mr. Hanson if he could work alone. There were no jobs available where Mr. Castaneda would be able to work entirely alone, however.

16. Some of the sanitation workers called Mr. Hanson “el joto” behind his back as a nickname. This means “homosexual” or “gay” in Spanish. Mr. Castaneda thought that Mr. Hanson was probably gay although other employees did not. Mr. Hanson is not gay and has not made sexual advances towards employees at Chiquita. He may have patted employees on the shoulder on occasion when they had done a good job.

17. Mr. Hanson recommended to Mr. Castillo-Delgado that Mr. Castaneda not be retained at the end of his probationary period. Mr. Castillo-Delgado was responsible for monitoring the performance of probationary employees. Mr. Hanson had no power to hire or fire himself. Mr. Hanson was aware of Mr. Castaneda’s cleaning problems, his problems with co-workers, and he saw the conflict between Mr. Castaneda and Mr. Lopez as the last straw.

18. Mr. Castillo-Delgado then recommended to the Human Resources Manager, Bruce Williams, that Mr. Castaneda be terminated because of poor work and problems with co-workers, including getting angry. On January 11, 2002, shortly before the end of the 30-day probation period, Mr. Hanson and Mr. Castillo-Delgado told Mr. Castaneda that he was being terminated because he did not do the work well. Mr. Castaneda felt bad for several days because of the termination for poor work.

19. After the termination Mr. Castaneda did see Mr. Williams and told him that he didn’t think that poor work was the real reason that he was fired. He did not complain about the touching by Mr. Hanson, however. Mr. Williams then investigated by talking to employees, including one suggested by Mr. Castaneda. Mr. Williams found that Mr. Castaneda had conflicts with three employees and cleanup problems. He concluded that the termination was justified.

20. On March 9, 2002 Mr. Castaneda filed a complaint with the Equal Employment Opportunity Commission alleging discrimination by Chiquita in his termination. He stated that “Dale put his arm around me and hugged me and I did not like that action and tried to keep as far away as possible from him.” He stated that he

believed he was fired because he would not allow Mr. Hanson to go farther with his sexual harassment. Mr. Castaneda indicated however that he believed that the discrimination against him was on the basis of race and age.^[7] The EEOC dismissed the complaint in August of 2002. Mr. Castaneda filed a charge of discrimination with the Minnesota Department of Human Rights on August 14, 2002.

21. After his termination by Chiquita, Mr. Castaneda eventually found employment with Seneca at hourly rates of pay ranging from \$6.25 to \$9.40.^[8]

22. Mr. Castaneda was detained by the federal government on October 21, 2003, pending a possible extradition to Mexico.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. § § 14.50 and 363.071.

2. The Department of Human Rights has complied with all relevant substantive and procedural requirements of law and rule and the Complainant has received proper notice of the hearing in this matter.

3. The Respondent is an employer within the meaning of Minn. Stat. § 363.01, subd. 17 (2000).

4. Under Minn. Stat. § 363.03, subd. 1(2)(b)(2000), it is an unfair discriminatory practice for an employer to discharge an employee because of sex.

5. Minn. Stat. § 363.01, subd. 41 provides in part, that:

“Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

...

(2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, ...”

6. The Complainant has the burden of proof to establish by a preponderance of the evidence that the Respondent discriminated against him on the basis of sex in violation of Minn. Stat. § 363.03, subd. 1.

7. The Complainant has not established a *prima facie* case of sex discrimination by a preponderance of the evidence.

8. The Respondent has asserted legitimate non-discriminatory reasons for its layoff of the Complainant.

9. The Complainant has not demonstrated that the asserted reasons for his termination were pretextual.

10. The Complainant has not established by a preponderance of the evidence that the Respondent discriminated against him on the basis of sex.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT: This matter is dismissed with prejudice.

Dated this 2nd day of February 2004.

/s/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Tape-recorded
Seven Tapes. No Transcript Prepared

MEMORANDUM

This Complainant's complaint alleges discrimination in violation of Minnesota law on the grounds of sex discrimination, national origin discrimination and reprisal. Mr. Castaneda has not pursued his allegation of national origin discrimination. In a prehearing order summary judgment was granted for Chiquita as to Mr. Castaneda's claims of hostile work environment discrimination and reprisal. The claim of *quid pro quo* sex discrimination proceeded to hearing.

The Minnesota Human Rights Act prohibits discrimination on the basis of sex and defines sexual harassment to include sexually motivated physical contact when submission to, or rejection of, that conduct is used as a factor in decisions affecting employment. Discrimination claims under the Minnesota Human Rights Act, at least absent direct evidence of discrimination, are analyzed under the shifting burden

analysis first set out in McDonnell Douglas Corp. v. Green^[9]. The Complainant must first establish a *prima facie* case of discrimination. If he carries his initial burden of production, the burden shifts to the employer to “articulate some legitimate non-discriminatory reason for the employee’s termination.”^[10] The burden then shifts back to the Complainant to show that the reason offered by the employer was a pretext.^[11] At all times, the Complainant maintains the ultimate burden of persuading the trier of fact that the adverse employment actions were motivated by sex.^[12]

In this case Mr. Castaneda claims that he was the victim of sexually motivated physical contact and that his rejection of the behavior was a factor in his termination as an employee with Chiquita Processed Foods. *Quid pro quo* sexual harassment occurs when submission to sexual conduct is made a condition of employment.^[13] It includes same-sex sexual harassment.^[14] A *prima facie* violation is established when a complainant shows that (1) he is a member of a protected class; (2) he was subjected to unwelcome sexual harassment in the form of sexual advances or request for sexual favors; (3) the harassment was based on sex; and (4) the refusal to submit resulted in a tangible job detriment.^[15]

Mr. Castaneda’s sex discrimination claim survived the Motion for Summary Judgment based upon his testimony that the hug he received from his supervisor was of a sexual nature, that Mr. Hanson had touched the back of his neck on another occasion and that Mr. Hanson had the nickname of “el joto” in the plant. Additionally, the Complainant pointed to the short time period between the alleged sexual incident and his termination, plus the apparent failure of the employer to discipline other employees for similar work problems.

The Administrative Law Judge has concluded that Mr. Castaneda’s supervisor did put his arm around Mr. Castaneda’s neck and drew Mr. Castaneda towards him.^[16] However, based upon the full evidentiary record in this matter, Mr. Castaneda has not proved a *prima facie* case by a preponderance of the evidence. He has not proved that the contact with his supervisor was a sexual advance nor has he proved that this incident was a factor in his termination of employment from Chiquita.

Although Mr. Castaneda was uncomfortable with Mr. Hanson placing his arm around his neck, the record establishes that it is more likely than not that this was not sexually motivated. Both Mr. Castaneda and Mr. Hanson were wearing hard hats, ear protection and long white coats and the plant was noisy. It seems likely that Mr. Hanson was pointing towards a machine to tell Mr. Castaneda something when he pulled Mr. Castaneda towards him. The contact was brief and minimal. The incident lasted no more than two or three seconds. Despite being uncomfortable, Mr. Castaneda made no complaint about Mr. Hanson’s conduct when it occurred and did not mention it to Mr. Williams when he spoke to him about his termination after January 11, 2002. He first raised the issue when filing with the EEOC on March 29, 2002. There were no witnesses to the occurrence and the record is devoid of any indication of Mr. Hanson having engaged in sexually motivated physical contact or unwelcome sexual advances at any other point in his career at Chiquita, where he has worked since 1987.

Although some workers called Mr. Hanson “el joto” or “gay” behind his back, the evidence indicates that this was not based upon any conduct but rather was a nickname assigned to Mr. Hanson by subordinate employees. The term “el joto” was (apparently inaccurately) interpreted at the deposition to mean “sexual predator”. At the hearing it was interpreted to mean “gay” or “homosexual”. The record indicates only that Mr. Hanson would sometimes pat an employee on the shoulder for a job well done or hug an employee at the end of a season. The record does indicate that Mr. Castaneda believed that Mr. Hanson was gay and that Mr. Castaneda does not particularly approve of gays. He testified that Mr. Hanson’s movements, the way he cleaned and “everything he did” suggested he was homosexual. It seems likely that Mr. Castaneda misinterpreted Mr. Hanson’s actions due to the nickname and Mr. Castaneda’s belief about Mr. Hanson.

Neither does the record support a connection between the physical contact with Mr. Hanson and Mr. Castaneda’s termination as an employee shortly before the end of his probationary period, as discussed below.

Chiquita asserted a legitimate non-discriminatory reason for Mr. Castaneda’s employment, namely his work performance, including his inability to get along with trainers and co-employees. Despite Mr. Castaneda’s testimony that he was a good worker and got along with other employees, the record clearly indicates that the contrary was true. The evidence indicates that on several occasions his work had to be redone by others. His failure to clean adequately on January 10, 2002 did create a real possibility that the plant would not be able to start production on time that day.

Other employees, of course, also made mistakes. What seems to have set Mr. Castaneda apart was his difficulties with other employees. In working with two different trainers, Mr. Castaneda demonstrated that he was unable to accept instructions and would become upset and angry when corrected or asked to clean something a second time. He wanted to fight one of the trainers on two occasions. He admitted to exchanging loud words with one trainer. Both trainers told Mr. Hanson that they could no longer work with Mr. Castaneda. Mr. Castaneda also became engaged in a conflict with another employee on January 11, 2002. He did request of Mr. Hanson that he be allowed to work alone, however that was not possible.

The testimony of Mr. Castaneda’s former co-employees was convincing and demonstrated that he had problems with the cleaning and problems working with other employees, that included angry conflicts. The short time period between the occurrence with Mr. Hanson and Mr. Castaneda’s termination is not a significant factor since Mr. Castaneda was also approaching the end of his probationary period and the employer needed to make a decision on whether he would be retained as a union employee. The record does indicate that other employees were not disciplined for similar cleaning problems. But, Mr. Castaneda’s workplace problems went beyond those related to cleaning the equipment. And, Mr. Castaneda differed from other employees in that he was completing a probationary period.

Mr. Castaneda also believes that the hiring of temporary sanitation workers on January 8 and 9 of 2002, before he was fired, shows that Mr. Hanson had decided to let him go after the January 8, 2002 physical contact. The testimony indicated, however, that they were needed to bring the crew up to full strength. There was no evidence that Mr. Hanson was involved in this hiring. Mr. Castaneda argued that pretext was demonstrated because the employer changed the justification for the termination and had conflicting answers as to who was responsible for the firing. However, the Complainant's problems with co-workers was obvious, even though he was only told his work was poor. And Mr. Hanson's statement that he wouldn't have recommended Mr. Castaneda's termination only for cleaning problems, simply points out the significance of the conflicts with co-workers. The Respondent stated that only Mr. Williams was responsible for the firing. It appears that Mr. Hanson did make a recommendation to Mr. Castillo-Delgado who then made a recommendation to Mr. Williams. But only Mr. Williams had the authority to terminate an employee.

Chiquita has established a legitimate non-discriminatory reason for terminating Mr. Castaneda. The Complainant has not demonstrated that it was more likely than not that this reason was pretextual. Nor has he carried his ultimate burden of showing that discrimination occurred in his firing by Chiquita.

G.A.B.

^[1] Minn. Stat. § 363.03, subd. 1.

^[2] Minn. Stat. § 363.071, subd. 2.

^[3] Ex. 9.

^[4] Ex. 10.

^[5] Ex. 12.

^[6] Ex. 12.

^[7] Ex. 11.

^[8] Ex. 15.

^[9] 411 U.S. 792, 802-04 (1973). Danz v. Jones, 263 N.W. 2d 395 (Minn. 1978).

^[10] Sigurdson v. Isanti County, 386 N.W. 2d 715, 720 (Minn. 1986).

^[11] Anderson v. Hunter, Keith, Marshall & Co., 417 N.W. 2d 619, 623 (Minn. 1988).

^[12] Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

^[13] Kennedy v. G.N. Danavox, 928 F. Supp. 866 (D. Minn. 1996).

^[14] Vaag v. Thomas Pontiac, Buick, GMC, Inc., 930 F. Supp. 393 (D. Minn. 1996).

^[15] Benassi v. Back & Neck Pain Clinic, Inc., 629 N.W. 2d 475, 480-81 (Minn. Ct. App. 2001).

^[16] Findings of Fact No. 11.